

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHIZUKO MITA, surviving spouse of
Kay K. Mita; and FLOYD MITA,
individually, and as Personal
Representative of the Estate of Kay K.
Mita;

Plaintiffs,

v.

GUARDSMARK, LLC d/b/a
GUARDSMARK SECURITY, a
Delaware corporation; and COUNTY OF
SPOKANE, a local governmental entity;

Defendants.

NO: CV-10-129-RMP

ORDER MEMORIALIZING
COURT'S ORAL RULING
DISMISSING COMPLAINT FOR
LACK OF JURISDICTION

The Plaintiffs' sole federal claim in this matter is its claim for relief under 42 U.S.C. § 1983. That claim forms the sole basis for jurisdiction under 28 U.S.C. § 1331. The state negligence claims are before this Court by operation of the Court's supplemental jurisdiction. *See* 28 U.S.C. § 1367.

ORDER MEMORIALIZING COURT'S ORAL RULING DISMISSING
COMPLAINT FOR LACK OF JURISDICTION ~ 1

1 In its memoranda in opposition to the Defendants' motions for summary
2 judgment, the Plaintiffs seek to withdraw their § 1983 claim. ECF Nos. 73 at 9, 75
3 at 3. At a telephonic hearing set in response to this request, the Plaintiffs
4 confirmed that they wished to withdraw the § 1983 claim. No objections have
5 been lodged by the Defendants. The Court considers such a request as a Federal
6 Rule of Civil Procedure 41(a)(2) motion for voluntary dismissal of the Plaintiffs' §
7 1983 claim and grants the motion. Accordingly, the Plaintiffs' § 1983 claim is
8 dismissed.

9 The only remaining claims are state law negligence claims. As the sole
10 claim forming the basis for original jurisdiction has been dismissed, the Court may
11 decline to exercise jurisdiction over the pendent state law claims. § 1367(c)(3).
12 “[I]n the usual case in which all federal-law claims are eliminated before trial, the
13 balance of factors will point toward declining to exercise jurisdiction over the
14 remaining state-law claims.” *Acri v. Varian Associates, Inc.*, 114 F.3d 999, 1001
15 (9th Cir. 1997) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7
16 (1988)). The record furnishes no basis for the Court to deviate from the usual
17 course of action in this case. Accordingly, the Court declines to exercise
18 supplemental jurisdiction over the Plaintiffs' remaining claims.

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1 Therefore, **IT IS HEREBY ORDERED:**

2 **1.** The above-caption action is **DISMISSED WITHOUT PREJUDICE** for
3 lack of subject matter jurisdiction.

4 **2.** All pending motions are **DENIED AS MOOT**.

5 **3. JUDGMENT** shall be entered.

6 **IT IS SO ORDERED.**

7 The District Court Executive is hereby directed to enter this Order, to
8 provide copies to counsel, and to **CLOSE** this file.

9 **DATED** this 9th of February 2012.

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11 *s/ Rosanna Malouf Peterson*
12 **ROSANNA MALOUF PETERSON**
13 Chief United States District Court Judge
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